

**49 CFR Parts 173 and 177**

**[Docket No. HM-164B]**

**Notification to RSPA of Route Plans  
for Radioactive Materials  
Transportation**

**AGENCY:** Office of Hazardous Materials  
Transportation, Research and Special  
Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action is being taken to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation by highway of highway route controlled quantities (HRCQ) of radioactive materials. This action is necessary to correct problems related to late and inaccurate information that is being received under the current system. More accurate and timely information will facilitate more effective enforcement of the routing requirements for HRCQ shipments of radioactive materials.

**FOR FURTHER INFORMATION CONTACT:**  
John A. Gale, (202) 366-4488, Office of  
Hazardous Materials Transportation,  
RSPA, Washington DC 20590.

**EFFECTIVE DATE:** July 11, 1988.

**SUPPLEMENTARY INFORMATION:** On July 16, 1987, RSPA published Notice No. 87-9 (52 FR 26932) under Docket HM-164B which proposed to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation of HRCQ of radioactive materials.

RSPA received seven comments to Docket HM-164B, all of which supported the proposed changes. In addition, three commenters requested that additional provisions be added to the rule. For the reasons discussed in this document, RSPA denies these requests and adopts HM-164B essentially as proposed.

The National Transportation Safety Board (NTSB) recommended that shippers be given the added responsibility of evaluating the

adequacy of routes selected by the carriers. RSPA believes that carriers of HRCQ of radioactive materials should determine route plans utilizing State-designated alternative routes, interstate highways and beltways around cities. RSPA sees no benefit to the safety of the general public in requiring shippers to review these route plans and believes that shippers would have difficulty in exercising control over routes used by carriers. Therefore, no action is taken on this recommendation.

NTSB also recommended that the routing requirement for HRCQ quantities of radioactive materials be broadened to apply to any hazardous material that may pose a substantial threat to the general public when transported. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Electric Utilities Companies' Nuclear Transportation Group (the "Group") recommended that carriers provide shippers with an indication of the date of submission of information to RSPA and with copies of all information provided to RSPA. The Group stated that this information could be used by a shipper to verify that a carrier has complied with the applicable requirements and to obtain accurate information concerning the HRCQ shipment. RSPA agrees that the first part of this request, i.e., that a carrier inform the shipper of the date when the applicable reporting requirement has been satisfied, may be of interest to the shippers. However, RSPA believes that this should be a contractual matter between the two parties and not a regulatory requirement. RSPA believes that the second part of the request, i.e., that the carriers provide the shipper with all the information submitted to RSPA, is unnecessary because (1) § 177.825(c) already mandates that the information required under paragraph (f)(1) be given by the carrier to the shipper, and (2) the shipper already possesses the information and documents covered by paragraph (f)(2) and (f)(3). Consequently, no action is taken concerning the Group's recommendation.

The Department of Emergency Services of the Commonwealth of Virginia recommended that the routing agency of each State through which a HRCQ of radioactive material traverses also receive a copy of the route plan and all associated material from the carrier. This commenter said that this would

help States ensure that shipments of HRCQ of radioactive material are transported over the safest possible routes. RSPA believes that adoption of this requirement is unnecessary. First, with the exception of national security shipments, the information requested already is available to the States through the Hazardous Materials Information System (HMIS) managed by RSPA. Second, Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 73, incorporated by reference at 49 CFR 173.22(c), already require that States be notified in advance of shipments of spent nuclear fuel. Although the NRC regulations do not apply to Department of Energy and Department of Defense shipments, those departments voluntarily provide prior notification to States except with respect to national security shipments.

With the exception of minor editorial revisions to § 177.825, RSPA is adopting the proposals contained in Notice No. 87-9 without change. In § 177.825(f), the reference to "§ 177.825(c) of this subchapter" has been changed to "paragraph (c) of this section"; the words "concerning the transportation of each such package" have been added for clarification; and the words "including all required amendments reflecting the routes actually used" have been substituted for a proposed (but unclear) parenthetical reference in paragraph (f)(1) to the requirements of § 177.825(c).

#### Administrative Notices

RSPA has determined that this rulemaking: (1) is not "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have

Federalism implications, as defined in Executive Order 12612.

#### Paperwork Reduction Act

Information collection requirements contained in the current § 173.22(d) pertaining to providing RSPA with certain shipping information have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0510.

#### List of Subjects

##### 49 CFR Part 173

Hazardous materials transportation. Shippers' responsibility.

##### 49 CFR Part 177

Hazardous materials transportation. Radioactive materials. Shippers. Carriers.

In consideration of the foregoing, 49 CFR Parts 173 and 177 are amended as follows:

#### PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

##### § 173.22 [Amended]

2. In § 173.22, paragraph (d) is removed.

#### PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

4. In § 177.825, a new paragraph (f) is added to read as follows:

##### § 177.825 Routing and training requirements for radioactive materials.

(f) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73, each carrier who accepts for transportation a highway route controlled quantity of radioactive material (see § 173.401(1)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Director, Office of Hazardous Materials Transportation, RSPA:

(1) The route plan required under paragraph (c) of this section, including

all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the radioactive material in the shipment required by §§ 172.202 and 172.203 of this subchapter.

(Approved by the Office of Management and Budget under Control number 2137-0510)

Issued in Washington, DC on May 6, 1988 under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-10631 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-60-M